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PETITION FOR WRIT OF CERTIORARI AND BRIEF.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1941

No. [redacted] 92

MURRAY HUMPHREYS

Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE

Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

CHARLES P. R. MACAULAY,
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PETITION FOR WRIT OF CERTIORARI.

To the Honorable the Chief Justice and Associate Justices of the Supreme Court of the United States:

Your petitioner, Murray Humphreys, respectfully represents that he duly filed his petition before the United States Board of Appeals for a re-determination of a deficiency in his income tax payments for the years 1930, 1931 and 1932 claimed by the respondent, the Commissioner of Internal

Revenue; that the Board rendered its decision against the petitioner and found that deficiencies were due from him, as claimed by the said respondent (R. 345); that your petitioner duly appealed to the United States Circuit Court of Appeals for the Seventh Circuit, pursuant to the provisions of sections 1141 and 1142 of the Internal Revenue Code; that on January 28, 1942 the Circuit Court of Appeals affirmed the decision of the Board of Tax Appeals (R. 415); that your petitioner duly filed his petition for rehearing and that the Circuit Court of Appeals on February 18, 1942 entered an order that said petition for rehearing be denied (R. 416).

The jurisdiction of this Court to review the said judgment of the Circuit Court of Appeals is invoked under Section 240 of the Judicial Code, as amended, and under Section 641 of Title 26 of the United States Code.

A copy of the opinion of the Circuit Court of Appeals is printed in full on pages 410 to 414 of the record. The opinion of the Board of Tax Appeals is printed on pages 345 to 373 of the record.

Statement of the Matter Involved.

The petitioner did not keep books and he made income tax returns on the basis of expenditures (R. 47, 48).

Issues were made by the pleadings as to whether the petitioner had failed to pay income tax which had accrued within a specified period. The respondent claimed (1) that the petitioner under the name of M. L. Brunswick maintained an account in the Sears Community Bank in Chicago and that he had deposited large sums in said account; (2) that the petitioner during the year 1930 received $10,000 from a group of cleaners and dyers; (3) that in 1931 and

1932 the petitioner received $7,800 from a concern called the Drexel Cleaners (R. 34, par. 19; page 36, par. 40); (4) that in 1931 the petitioner paid $5,000 to the New Drexel Cleaners (R. 23, par. 23).

It was claimed by the respondent that the petitioner did not include in his tax returns the income represented by said deposits, receipts and investment.

The petitioner (1) denied having any interest in the Brunswick account (R. 51); (2) he denied receiving $10,000 from the group of cleaners and dyers, but admitted receiving $5,000 from them and he averred that he had included said income of $5,000 in his tax return (R. 18, par. 10); (3) he admitted receiving the sum of $7,800 from the Drexel Cleaners, but averred that he included said amount in his tax return (R. 19, pars. 11 and 12); he denied paying $5,000 to the Drexel Cleaners, but averred that 50 shares of stock in said company had been given to him (R. 19). The petitioner testified under oath in support of his said allegations and he was not contradicted. There was no substantial evidence introduced to support the claims of the respondent. The respondent relied on argument rather than on proof and based his case chiefly on the testimony of a police officer to the effect that the petitioner's general reputation in the community in 1930 and 1931 was that of a gangster and a racketeer (R. 284). The court below held that the fact that the petitioner was regarded as a gangster and racketeer was a controlling fact (Opinion, R. 411).

It was also alleged by the respondent that in December, 1931, a man named Fitchie was kidnapped; that in January, 1932, $50,000 was paid to the petitioner for his release and that the petitioner had not paid tax on said income (R. 25, pars. 40, 41, 42). The petitioner denied the

kidnapping of Fitchie and denied receiving said money (R. 31, pars. 40, 41, 42). As to this item there was some conflict in the evidence. The respondent produced a witness named Sumner, who testified that $50,000 was left on the seat of an automobile and that he saw the petitioner take the money from the car (R. 194, 197). The petitioner testified that he knew nothing about the kidnapping of Fitchie and that he had never been to the place where the car was parked (R. 302). There was much evidence tending to prove that the testimony of Sumner was false and that the testimony of the petitioner was true, but the issue was found against the petitioner.

The expense of the operation of the petitioner's automobile in his business amounted to $951 for the year 1932 and the depreciation in that year was $1,595. The petitioner in his tax return claimed credit for the said items. The respondent alleged that the said auto expense was false and fraudulent and was reported by the petitioner in his income tax return for the year 1932 for the purpose of creating a fraudulent deduction with intent to evade tax (R. 37, par. 43). The respondent never claimed that the petitioner used the car in any unlawful business nor that the petitioner had no lawful business (R. 33-38). The theory of the respondent appears to have been that a person who evades the payment of income tax must pay the full amount with penalties and forfeits any right to make any deductions for expenses. Since there was no issue made as to whether the petitioner had any lawful business, no evidence as to such matter was introduced. Nevertheless the Board of Tax Appeals disallowed the deductions on the ground that the petitioner was not engaged in any lawful business within the meaning of the statute and the Circuit Court of Appeals sustained the action of the Board (R. 414).

At the hearing before the Board of Tax Appeals considerable evidence was introduced tending to prove that the Brunswick account in the Sears Community Bank was opened by and belonged to a man known as "Lefty" Leventhal, who also did business under the name of M. L. Brunswick (R. 169, 170, 94, 251, 343, etc.). Notwithstanding the testimony of the petitioner that he was not the man who opened the Brunswick account and his testimony that he had no interest in said account, the respondent did not call Leventhal as a witness. But the Board of Tax Appeals said, in the opinion which it rendered after the hearing, that the most logical way of establishing Leventhal's exact status or connection with the Brunswick operations would have been to have called him to the witness stand (R. 367). The petitioner filed his petition for rehearing and made a motion for leave to call Leventhal to the witness stand, but the Board denied the motion (R. 385—the denial of the motion is shown by an order signed by the member and written at the top of the motion). The Circuit Court of Appeals sustained the action of the Board of Tax Appeals in denying said motion (R. 414).

The errors intended to be urged are that the court below erred in affirming the decision of the Board of Tax Appeals; that the judgment was not supported by the evidence; that the court erred in holding that the following findings of the Board of Tax Appeals were supported by the evidence: (a) that the petitioner was the owner of the M. L. Brunswick account; (b) that Fitchie was kidnapped; (c) that the petitioner received any money for the release of Fitchie; (d) that the petitioner received ten thousand dollars, the amount paid to Dr. Ginsberg by certain cleaners and dyers; (e) that the petitioner did not include in his tax return the receipt by him of five thousand dollars from Dr. Ginsberg; (f) the petitioner was

liable for taxes on the sums of twenty-six hundred dollars and fifty-two hundred dollars, which he received from the New Drexel Cleaners as salary for the years 1931 and 1932, though said income was included by him in tax returns for said years; (g) that the petitioner was not entitled to deductions on account of automobile expenses; (h) that the motion by the petitioner for leave to present the testimony of Leventhal was properly denied.

Questions Presented.

The questions presented are whether evidence claimed by the respondent to prove that your petitioner was regarded as a gangster and racketeer was properly considered by the court to be a controlling fact in this case (R. 411, 413); whether the petitioner was the owner of an account maintained in the name of M. L. Brunswick, in the Sears Community Bank in Chicago (R. 330), and liable for income tax on money deposited in said account (R. 35, par. 25; page 46, par. 41; page 41, par. 25; page 43, par. 41); whether the petitioner received in the year 1930 from a group of cleaners and dyers (Klever Shampay Cleaners and Dyers, *et al.*), the sum of $10,000 and failed to report said income (R. 34; pars. 11 and 12) or whether the petitioner only received $5,000 of said sum (R. 55) and included said sum of $5,000, which he recevied, in his reported income (R. 48, page 29, pars. 11 and 12); whether the petitioner included in his tax return the sum of $7,800, which he admitted receiving (R. 50, 51); whether the petitioner paid $5,000 to the Drexel Cleaners, or whether 50 shares of stock in said company were given to him (R. 19, 301); whether the petitioner received $50,000 ransom money (R. 301-2); whether the petitioner should have been allowed a deduction for expense of operation of his automobile and for depreciation in the year 1932 (R. 37); and whether he should have been allowed to present

Leventhal as a witness after the decision of the case by the Board of Tax Appeals (R. 385).

Reasons for Allowance of Writ.

As reasons relied on for the allowance of the writ the petitioner submits that the evidence introduced for the purpose of branding your petitioner as a gangster and racketeer should have been disregarded by the court below and should not have been deemed to be a controlling fact in the case (R. 411); that it appears that issues were decided against the petitioner in spite of uncontradicted evidence as a result of the court permitting itself to be influenced by the evidence reflecting upon the character of the petitioner; that though the evidence in regard to the petitioner being implicated in the alleged kidnapping of Fitchie and in regard to whether ransom money was paid to the petitioner was conflicting, it is to be feared that the court in passing upon the weight of the conflicting testimony was influenced by the said evidence.

It is submitted that the decision below should be reviewed for the reason that it is erroneous and not in accord with the principles of applicable decisions of this Court. Though circumstantial evidence was relied on by the Commissioner of Internal Revenue to prove that the petitioner received and had not paid tax on various alleged items of income, the circumstances were not proved, but were themselves presumed by the Court below contrary to the decision of this Court in *Chicago, Milwaukee & St. Paul Railway Co.* v. *Coogan*, 271 U. S. 472, 477.

Wherefore petitioner respectfully prays that a writ of certiorari be issued out of and under the seal of this Honorable Court directed to the United States Circuit Court of Appeals for the Seventh Circuit, commanding that court

to certify and to send to this Court for its review and determination a transcript of the record and proceedings herein; and that the judgment of the Circuit Court of Appeals for the Seventh Circuit be reversed by this Honorable Court, and your petitioner have such other and further relief in the premises as to this Honorable Court may seem meet and just.

MURRAY HUMPHRIES,
Petitioner,

CHARLES P. R. MACAULAY,
Attorney for Petitioner.